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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1884**

State of Minnesota,  
Respondent,

vs.

Morgan Terrett Wilson,  
Appellant.

**Filed July 13, 2010  
Affirmed  
Klaphake, Judge**

Ramsey County District Court  
File No. 62-CR-08-17634

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Susan Gaertner, Ramsey County Attorney, Mitchell L. Rothman Assistant County Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jodie Lee Carlson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Willis,  
Judge.\*

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**KLAPHAKE**, Judge

Appellant Morgan Terrett Wilson challenges his conviction of second-degree burglary, claiming that the district court abused its discretion by refusing to allow him to withdraw his guilty plea and by failing to consider his request for a probationary sentence, which would be a downward dispositional sentencing departure. We affirm because we conclude that the record fully supports the district court's exercise of discretion in deciding not to permit withdrawal of appellant's plea and in imposing an executed prison sentence.

### DECISION

#### *Plea Withdrawal*

Appellant claims that he should be allowed to withdraw his plea because he was pressured into pleading guilty by his attorney and because his conduct did not constitute burglary. "The decision to allow a defendant to withdraw his or her guilty plea is left to the discretion of the district court," and this court will reverse that decision only if the district court abused its discretion. *State v. Farnsworth*, 738 N.W.2d 364, 372 (Minn. 2007). The district court has discretion to permit a defendant to withdraw a guilty plea before sentencing, if it is "fair and just to do so." Minn. R. Crim. P. 15 .05, subd. 2. The court must permit a defendant to withdraw a plea, whether the motion is made before or after sentencing, if the plea is manifestly unjust. *Id.*, subd. 1. "To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent[ly made]," and the

defendant bears the burden of showing an invalid plea. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

Appellant's claim of an involuntary plea is contradicted both by his signed plea agreement and by his plea hearing testimony in which the court established the voluntariness of his plea. Appellant's plea agreement set forth the rights that he was foregoing in order to plead guilty, and an oral recitation of those facts was made part of the record at the plea hearing. Specifically, appellant stated at his plea hearing that he was satisfied that his attorney represented his interests and fully advised him. Other than making a bald allegation of involuntariness, appellant has not shown any improper pressure, coercion, or unwillingness by his counsel to properly represent him, nor would the record support such a claim. The district court did not find appellant's allegations credible and found instead that appellant's true basis for seeking to withdraw his plea was his dissatisfaction with his sentence. The reasons advanced by appellant do not establish that his plea was made involuntarily. *See id.* at 96, 98 (rejecting claim of involuntary plea, based on defendant's extreme stress, irrational thinking, improper pressure, or stress, when facts showed "acceptance and understanding of the plea" and defendant "failed to advance substantiated reasons for withdrawal of his plea").

Appellant also claims that he should have been allowed to withdraw his plea because "his conduct was a theft by swindle and not a burglary"; he offers no factual or legal support for this claim in the argument section of his appellate brief. Appellant's conduct consisted of entering the home of an elderly woman after falsely identifying himself as a tax inspector, conducting a physical "inspection" of the home, and

demanding payment of \$150 for the “inspection.” Part of the definition of second-degree burglary is the act of “enter[ing] a building without consent and with intent to commit a crime.” Minn. Stat. § 609.582, subd. 2 (2008). Because appellant obtained the victim’s consent by artifice, his conduct met the definition of second-degree burglary and supports a plea to second-degree burglary. *See* Minn. Stat. § 609.581, subd. 4(b) (2008) (defining “enters a building without consent” language of burglary statute to include entering a building “by using artifice, trick, or misrepresentation” to gain consent). Thus, this claimed basis for plea withdrawal is without merit.

Finally, appellant claims that the district court erroneously applied only a manifest injustice standard to his plea withdrawal request. *See* Minn. R. Crim. P. 15.05, subd. 1 (permitting plea withdrawal, either before or after sentencing, “to correct a manifest injustice”). At the plea withdrawal hearing, the district court noted both the “fair and just” and “manifest injustice” standards of rule 15.05, made oral findings consistent with the rule, and enunciated both standards in ruling as it did. Thus, the record does not support appellant’s claim.

We conclude, for all of these reasons, that the district court’s denial of appellant’s plea withdrawal motion was a proper exercise of its discretion.

#### *Executed Sentence*

Appellant also claims that the district court abused its discretion by imposing an executed prison sentence rather than a probationary sentence, which would amount to a downward dispositional departure from the presumptive sentence. Appellate courts apply the abuse-of-discretion standard to review a district court’s decision to impose a

presumptive guidelines sentence rather than a downward dispositional departure. *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006). While an appellate court will not completely reject an appeal of a district court decision not to depart dispositionally, only in a “rare case” will an appellate court reverse a district court’s decision to impose a guidelines sentence. *Id.* (quotation omitted).

Ordinarily, a district court must impose the presumptive sentence unless “substantial and compelling circumstances” warrant a different sentence. Minn. Sent. Guidelines II.D. The district court was required to consider appellant as an individual in deciding whether to depart dispositionally. *State v. Wright*, 310 N.W.2d 461, 462 (Minn. 1981). The district court must weigh such relevant factors as appellant’s amenability to probation, age, prior record, remorse, cooperation, attitude while in court, and the support of friends and family. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982); *State v. Abrahamson*, 758 N.W.2d 332, 337 (Minn. App. 2008), *review denied* (Minn. Mar. 31, 2009).

Here, the only basis for appellant’s dispositional departure request is that he was admitted to a 30-day residential treatment program at Minnesota Teen Challenge and could complete this program only if sentenced to probation rather than an executed prison sentence. However, appellant has a criminal history score of ten, having committed at least nine prior felony offenses, most theft-related, during the past 20 years. He also failed numerous chemical dependency treatment programs in the past, and, in particular, he was unsuccessful at treatment at Minnesota Teen Challenge in 2002, when he was found to be “unamenable to the program.” Also, the record includes evidence that

appellant received a downward dispositional sentence of probation in the past, that it was “unsuccessful,” and that he has an extensive history of other probation violations. As the record clearly rejects appellant’s given basis for requesting probation and appellant has offered no other factors to support a downward dispositional departure, we conclude that the district court did not abuse its discretion by imposing the presumptive executed sentence. While the district court did not specifically address appellant’s downward dispositional departure motion at sentencing, the district court’s decision to impose a presumptive sentence was an implicit rejection of appellant’s motion that is fully supported by the record.

**Affirmed.**